NEWS

No say in cell towers

Cities, towns want to have decision powers

By Bill Cummings, Investigative Reporter
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New Milford Mayor Art Peltier, backed by a large crowd of opponents of a proposal by Sempra Energy Resources of San Diego to

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When he appears before the Connecticut Siting Council, Keith Ainsworth knows the odds are against him.

The New Haven lawyer often presents reams of documents and hortifatt testimony on behalf of clients opposed to cell towers in their neighborhoods. The result is almost always the same.

"If you are a cell phone company, odds are you will win," Ainsworth said.

A review by Hearst Newspapers of the Siting Council's record shows that Ainsworth is not exaggerating. Since it was formed in 1972, the council has approved 96 percent of the applications before it. At first, those applications were for power plants and transmission lines. Now, the vast majority involve cell towers.

Several bills now before the General Assembly would strip the Siting Council of its exclusive authority and return the decision to local governments.

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But local control may not provide the breakwater activists are seeking against the spread of steel antenna-topped towers. A federal law passed 14 years ago to encourage proliferation of cell phones makes it difficult for any government, state or local, to reject them.

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Connecticut is one of only two states in the nation -- Vermont is the other -- that allows a single state agency to decide where cell towers can be built.

The remaining states all allow more local control. Some use a county-level board while others leave the decision to local zoning and land-use panels.

The popularity of cell phone service is steadily growing. Smart phones like BlackBerrys, iPhones and Android devices process more data than earlier phones and that requires more antennas. Amtrak is offering free Wi-Fi service on its trains, so it needs more towers along the tracks.

Already more than 1,500 towers dot the Connecticut landscape.

Cell phones work by bouncing a signal from a tower to a switching station and on to the next tower. More towers mean fewer coverage gaps that can end a conversation in mid-sentence.

State Rep. Larry Miller, R-Shelton, has been fighting cell towers for at least a decade and is one of a handful of legislators spearheading a drive to give control back to local communities.

"They are all over the place," Miller said. "The towns should have a say. Some towers in Fairfield County are outrageous. You see large homes with big monster antennas next to them."

In Greenwich, activists have been fighting cell tower proposals for months, including one near several schools. Similar battles have been waged in New Milford.

East Lyme neighbors are enraged over a neighbor who plans to lease space for a tower on a sliver of his 52-acre parcel. The tower would be far from the landowner's home and next to a neighborhood.

Robin Latta is upset over a cell phone tower proposed near her home in Branford.

"There are many concerns, about safety, health, environmental and property devaluation. Please bring back local control," Latta recently told the Legislature's Environment Committee.

The environment committee earlier this month passed a Senate version of the bill, but there is debate over whether a provision allowing CSC to override local rejection should be included. Other versions of the bill don't include that provision.

June Lee, chairwoman of the Easton Conservancy Trust, said local control is needed because the CSC does not consider the impact of towers on towns and cities. "The council does not recognize the powerful and lasting impact of these decisions. Every other state locates towers in an equitable manner."

Attorney General Richard Blumenthal, who is seeking a U.S. Senate seat, said his office routinely receives complaints about cell towers.

"The bill provides a role for citizens in the siting of cell towers and ensures the location and type of tower is consistent with local land use," Blumenthal said in offering his support.

Cell phone companies can pay as much as $2,500 a month to lease land for a tower.

The siting council operates under a web of federal regulations originally designed to encourage the growth of cell phones and towers. The governing statute is the federal Telecommunications Act of 1996.

While the act allows states to regulate cell phone towers, it stipulates that they cannot reject on the basis of health concerns as long as the tower emits radio frequency signals within the standard established by the Federal Communications Commission. One of the most often cited complaints by opponents is that radiation from towers is harmful to people.

Federal law also mandates that states cannot discriminate against cell phone companies and forbids "zoning out" towers.

That leaves only one sure way to defeat a tower application: Prove it's not needed. Objections based on a significant disruption of an area, or how it fits into the landscape, can be also considered by the CSC.

A review of dozens of tower applications shows that cell phone companies understand the law and offer detailed evidence of gaps in service and how the new tower would resolve the problem.

The council sometimes chooses between several possible sites, and has lately been forcing cell companies to share towers.

Still, opponents aren't satisfied.

"They don't look at the accumulative impact. They look at whether there is a need on the basis of providing service. They listen to arguments, but they don't seem impressed," said Ainsworth, who has represented clients opposed to cell towers for the last decade.

Daniel Caruso, CSC's chairman and Fairfield's probate judge, conceded there are few reasons to reject a cell tower. He stressed that local zoning boards and other bodies routinely issue opinions to the council, including votes rejecting it.

The CSC is not bound by those decisions, Caruso said.

"The telecommunication act said there is a need and that the tower and equipment must conform to FCC standards for emissions," Caruso said.

"We can't consider the health effect. The cell phone companies spend a lot of money on their applications. They show there are gaps and a need for the tower. It's what I have to follow," Caruso said.

Caruso believes handing control to local boards could result in spotty coverage across the state and an unfair distribution of towers.

"The reason the council was formed was to make sure there was uniformity across the state. We address many issues the towns would not be able to. We look at the site. We do listen, and we hold hearings in each community. We often make changes to what's proposed. There is a tremendous demand for these towers, and it's increasing," Caruso said.

State Sen. Edward Meyer, D-Branford, and a co-sponsor of the cell phone bill, said he believes switching to local control would not result in widespread rejection. Meyer said it's more likely local zoning boards would change the location of proposed cell towers.

"I think the impact would be location and not disapproval. Cell phones are a part of our lives. Local planning and zoning boards would more likely look at location," Meyer said.

Meyer said that while federal law takes health and other issues off the table when considering cell towers, he believes local government has ample room to reject a tower or change its location based on public safety and disruption of a neighborhood.

"I attended a (siting council) meeting and the members did not seem focused on the concerns of residents. I think we need a change in governance," Meyer said.

Meyer conceded that a switch to local control could result in a wave of lawsuits from cell companies upset that a tower was moved or denied altogether.

In a joint statement, AT&T, Verizon, T-Mobile and Sprint Nextel cast the bills before the legislature as unnecessary and an impediment to building towers and improving service.

"Left to municipalities, many of these important facilities might otherwise never be developed. Recognizing this, the legislature established the council as the single state agency with the experience and appropriate skill set to facilitate the appropriate siting of these facilities," the companies said.

CSC members are appointed by the governor and the state legislature. Some are designees of state agencies, such as the Department of Environmental Protection.

The council has a full time director and staff, and is funded through a tax placed on the industries it regulates, power and cell phone companies.

Two years ago, Vermont changed course and abandoned local control in favor of allowing the Vermont Public Service Board, a state agency, to make the decision.

"Cell service is spotty in Vermont," said Greg Faber, a utility analyst with the Vermont Public Service Board.

"We changed a couple of years back to get more broadband coverage. Everyone wants this stuff (cell phones), but not always in their town," Faber said.

Now a movement is under way in the Vermont Legislature to return control to the local level. Although Faber said he doubted the bill would pass, he acknowledged the effort is fueled by anti-tower sentiment.

"You can't say the entire town is scenic," Faber noted. "This is a constant battle."

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